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AT-LARGE ADVISORY COMMITTEE

ALAC Statement on the Trademark Clearinghouse and IDN Variants

Introduction

Rinalia Abdul Rahim, ALAC member and Executive Committee member from the Asian, Australasian and Pacific Islands Regional At-Large Organization (APRALO), and Hong Xue, At-Large member from APRALO, composed an initial draft of this Statement after discussion of the topic within At-Large and on the Mailing Lists.

On 11 April 2013, this Statement was posted on the [At-Large Trademark Clearinghouse and IDN Variants Workspace](#).

On 23 April 2013, Olivier Crépin-Leblond, Chair of the ALAC, requested ICANN Policy Staff in support of ALAC to send a Call for Comments on the draft Statement to all At-Large members via the [ALAC Announce Mailing List](#).

On 9 May 2013, a version incorporating the comments received was posted and the Chair requested that Staff open a five-day ALAC ratification on the Statement.

On 20 May 2013, Staff confirmed that the online vote resulted in the ALAC endorsing the Statement with 13 votes in favor, 0 votes against, and 0 abstentions. You may review the result independently under: <https://www.bigpulse.com/pollresults?code=3123CkrRt5n5tCzYdgAq4CU>

The Chair then requested that the Statement be transmitted to the Public Comment process, copying the ICANN Staff member responsible for this Public Comment topic.

Summary

1. Call for a more open and flexible TMCH model that is variants-friendly and support a community-based, bottom-up solution for TMCH implementation.
2. Ensure the IDN variant issue is addressed before the TMCH begin providing services to the new gTLD registries.
3. Request from the ICANN CEO an interim mechanism that can yield appropriate solutions efficiently and on an urgent basis that may involve the following:
 - a. ICANN (staff) providing relevant expertise to the community to develop interim services in order to authenticate and verify that trademarks are compatible with variants. Such services should be interoperable with the TMCH so as to enable the timely launch of the IDN TLDs;
 - b. A consideration for expediting the LGR process for the Han script; and
 - c. Longer-term recommendation: A review of the IDN Tables and IDN Registration Rules and Policies submitted by new gTLD applicants offering IDN registrations as a basis for developing a more comprehensive, longer-term solution.

The original version of this document is the English text available at <http://www.atlarge.icann.org/correspondence>. Where a difference of interpretation exists or is perceived to exist between a non-English edition of this document and the original text, the original shall prevail.

ALAC Statement on the Trademark Clearinghouse and IDN Variants

Introduction

The At-Large Advisory Committee (ALAC) is deeply concerned by the implementation model outlined in the “Trademark Clearinghouse: Rights Protection Mechanism Requirements” published on April 6, 2013. We view the model to be deficient in that it overlooks the critical issue of Internationalized Domain Name (IDN) variants. If implemented, the model would clearly run against the public interest in the pertinent user communities.

We wish to highlight two areas of particular concern in the recently published Trademark Clearinghouse (TMCH) requirements: Domain name matching and bundling.

Domain Name Matching

Since October 2011, language communities have requested that TMCH services factor IDN-script trademarks involving variants and that ICANN consider adopting community-based solutions to address this issue. Despite concerns raised by language community experts in the TMCH Implementation Assistance Group (IAG), the newly published domain name matching requirements of the TMCH still does not take into account trademarks in IDN scripts involving variants. Variant matching is critical in certain languages and particularly in Chinese. To illustrate, when a trademark holder registers a simplified Chinese word-mark and not its traditional equivalent, the TMCH will accordingly generate only one trademark record. The new generic Top Level Domain (gTLD) registries are obliged to offer sunrise services and trademark claims for trademarks recorded in the TMCH. Without variant matching requirements in place, only that registered simplified word-mark will be eligible for trademark protection. This leaves the traditional word-mark equivalent open for cybersquatting. Given that both simplified and traditional writings of the word-mark are deemed identical by Chinese communities worldwide (and by norm few trademarks are registered in both writings), ruling out the un-registered writing by not allowing variant matching would make the TMCH completely useless to Chinese trademarks, and would result in an unfair penalty against users of Chinese.

Domain Name Bundling

The TMCH requirements grant absolute first rights to trademark holders, which would not only pre-empt certain business models, but also prevent registries from implementing “variant or bundling rules” and allocating domain names under such “variant or bundling rules” prior to the conclusion of the Sunrise Period.

Towards A More Open and Flexible TMCH Model

Trademarks have the very important function of safeguarding the public interest by identifying the source of goods or services. A distorted TMCH design would cause serious public confusion and market chaos. Confusion over the source or origin of goods or services can be very harmful, particularly in the fields of banking, insurance and other high-security businesses. In principle, the At-Large community does not support over-extensive trademark protection measures. Nevertheless, we firmly believe that ICANN's Rights Protection Measures should treat the trademarks in any language or character set equally, the principle being that Internet users in any language community should be equally protected against confusion.

In September 2012, the ALAC statement on the TMCH called for a “more open and flexible model” that can address our community’s concerns regarding the limitations of a uniform model, which would be applied to all gTLD registries irrespective of their differences and competencies. We believe that new gTLD registries require a more open and flexible TMCH model to be successful and we strongly urge ICANN to move away from a model that is inflexible and unfriendly to variants.

In light of the considerations above, the ALAC urges the ICANN Board to call for a more open and flexible TMCH model. Towards this end, we urge the Board to support a community-based, bottom-up solution for TMCH implementation and to ensure that the IDN variant issue is addressed before the TMCH begin providing services to the new gTLD registries.

We understand that addressing the IDN Variant issue in a holistic way requires the development of Label Generation Rules (LGR) for the Root Zone, which will create a framework for a more consistent management of variants across all levels. Experts and Staff have projected that this process will require a minimum of 12 months. We appreciate that the LGR development requires conscientious effort to maintain the security and stability of the Internet, but we are also mindful that the business and practical requirements of new gTLD applicants, especially from developing economies, call for urgent implementation.

To expedite the development of appropriate solutions, the ALAC recommends that the Board request from the ICANN Chief Executive Officer (CEO) an interim mechanism that can yield such solutions efficiently and on an urgent basis. We believe that ICANN already has all the necessary information to develop these solutions based on the IDN Tables and IDN Registration Rules and Policies that were required as part of the application submissions for new gTLDs offering IDN registrations. The development of the solutions may require additional Staff with the appropriate linguistic capabilities working in tandem with community members with relevant expertise. It may also require a consideration of expediting the LGR process for the Han script. We understand that in the general case, the handling of variants is a complex issue. However, for variant cases that are well defined and understood, such as the case of the Han script, ICANN should proceed on a fast-track basis to include variant support in the TMCH in time to accommodate the delegation of the appropriate Top Level Domains (TLDs).

Summary of Recommendations to the ICANN Board

1. Call for a more open and flexible TMCH model that is variants-friendly and support a community-based, bottom-up solution for TMCH implementation.
2. Ensure the IDN variant issue is addressed before the TMCH begin providing services to the new gTLD registries.
3. Request from the ICANN CEO an interim mechanism that can yield appropriate solutions efficiently and on an urgent basis that may involve the following:
 - a. ICANN (staff) providing relevant expertise to the community to develop interim services in order to authenticate and verify that trademarks are compatible with variants. Such services should be interoperable with the TMCH so as to enable the timely launch of the IDN TLDs;
 - b. A consideration for expediting the LGR process for the Han script; and
 - c. Longer-term recommendation: A review of the IDN Tables and IDN Registration Rules and Policies submitted by new gTLD applicants offering IDN registrations as a basis for developing a more comprehensive, longer-term solution.